

## HOUSE BILL NO. 506

INTRODUCED BY M. PHILLIPS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE PLANNING AND MANAGEMENT OF OIL AND GAS OPERATIONS IN A MANNER THAT BALANCES OIL AND GAS DEVELOPMENT WITH FISH AND WILDLIFE CONSERVATION; REQUIRING THE BOARD OF OIL AND GAS CONSERVATION TO ESTABLISH STANDARDS, IN CONSULTATION WITH THE FISH, WILDLIFE, AND PARKS COMMISSION, FOR MINIMIZING ADVERSE IMPACTS TO FISH AND WILDLIFE RESOURCES AFFECTED BY OIL AND GAS OPERATIONS AND TO IMPLEMENT, WHENEVER REASONABLY PRACTICABLE, BEST MANAGEMENT PRACTICES AND OTHER MEASURES TO CONSERVE FISH AND WILDLIFE RESOURCES; AND AMENDING SECTIONS 82-11-101 AND 82-11-111, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Purpose.** In recognition of the state's obligation to protect fish and wildlife resources and the hunting, fishing, and recreation traditions those resources support, which are an important part of Montana's economy and culture, and in recognition of the oil and gas industry, which likewise is an important part of the state's and the nation's economy, it is the purpose of [sections 1 and 2] to plan and manage oil and gas operations in a manner that balances oil and gas development with fish and wildlife conservation and the public's hunting and fishing access rights in order to protect, preserve, enhance, and manage fish and wildlife and their environment for the use, benefit, and enjoyment of the people of this state and its visitors.

**NEW SECTION. Section 2. Minimization of adverse impacts to fish and wildlife resources affected by oil and gas operations.** (1) In order to minimize adverse impacts to fish and wildlife resources, the board shall:

(a) establish a timely and efficient procedure for consultation with the commission and the department of fish, wildlife, and parks on decisionmaking that impacts fish and wildlife resources;

(b) provide for board consultation and seek consent of the owner or the owner's appointed tenant regarding permit-specific conditions for the protection of fish and wildlife resources;

(c) implement, whenever reasonably practicable, best management practices and other measures to

1 conserve fish and wildlife resources;

2 (d) in consultation with the commission, adopt rules by July 1, 2010, to establish standards for minimizing  
3 adverse impacts to fish and wildlife resources affected by oil and gas operations and to ensure the proper  
4 reclamation of fish and wildlife habitat during and following oil and gas operations. At a minimum, rules must  
5 address:

6 (i) developing a timely and efficient consultation process with the department of fish, wildlife, and parks  
7 governing notification and consultation on minimizing adverse impacts and other issues related to fish and wildlife  
8 resources;

9 (ii) encouraging operators to use comprehensive drilling plans and geographic area analysis strategies  
10 to provide for orderly development of oil and gas fields; and

11 (iii) minimizing surface disturbance and fragmentation in fish and wildlife habitat by incorporating  
12 appropriate best management practices:

13 (A) in orders or rules establishing drilling units or allowing the drilling of additional wells in drilling units  
14 and in orders approving agreements for development or unit operations; and

15 (B) on a site-specific basis, as conditions of approval to a permit to drill.

16 (2) Nothing in this section may be construed to establish, alter, impair, or negate the authority of local and  
17 county governing bodies to regulate land use related to oil and gas operations.

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19 **Section 3.** Section 82-11-101, MCA, is amended to read:

20 **"82-11-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following  
21 definitions apply:

22 (1) "Administrator" means the administrator of the division of oil and gas conservation.

23 (2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

24 (3) "Class II injection well" means a well, as defined by the federal environmental protection agency or  
25 any successor agency, that injects fluids:

26 (a) that have been brought to the surface in connection with oil or natural gas production;

27 (b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

28 (c) for purposes of storing liquid hydrocarbons.

29 (4) "Commission" means the fish, wildlife, and parks commission established in 2-15-3402.

30 ~~(4)(5)~~ "Department" means the department of natural resources and conservation provided for in Title

2, chapter 15, part 33.

~~(5)(6)~~ "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

~~(6)(7)~~ "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; ~~such artificial~~ An artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

~~(7)(8)~~ "Field" means the general area underlaid by one or more pools.

~~(9)~~ "Fish and wildlife resources" means fish and wildlife and their aquatic and terrestrial habitats.

~~(8)(10)~~ "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

~~(11)~~ "Minimize adverse impacts" means to, whenever practicable:

(a) avoid adverse impacts from oil and gas operations on fish and wildlife resources;

(b) minimize the extent and severity of those impacts that cannot be avoided;

(c) mitigate the effects of unavoidable remaining impacts; and

(d) take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts to fish and wildlife resources.

~~(9)(12)~~ "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produces from a pool either for the person or others or for the person and others; ~~and the~~ The term includes all persons holding that authority by or through the person with the right to drill.

~~(10)(13)~~ "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind; ~~and~~ The term includes any agency or instrumentality of the state or any governmental subdivision of the state.

~~(11)(14)~~ "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild

animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

~~(12)~~(15) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; ~~each.~~ Each zone of a structure ~~which that~~ is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

~~(13)~~(16) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

~~(14)~~(17) "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot hole, or other area where oil and gas drilling and production operations were conducted.

~~(15)~~(18) "State waters" means any body of water, either surface or underground.

~~(16)~~(19) (a) "Waste" means:

(i) physical waste, as that term is generally understood in the oil and gas industry;

(ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner ~~which that~~ causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or ~~which that~~ causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(iv) the inefficient storing of oil or gas. ~~{The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.}~~

(b) The loss of gas to the atmosphere during coal mining operations is not waste within the meaning of this definition."

**Section 4.** Section 82-11-111, MCA, is amended to read:

**"82-11-111. Powers and duties of board.** (1) The board shall make ~~such~~ investigations ~~as that~~ it considers proper to determine whether waste exists or is imminent or whether other facts exist ~~which that~~ justify any action by the board under the authority granted by this chapter ~~with respect thereto~~.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the

1 disposal or injection of water and disposal of oil field wastes;

2 (b) require measures to be taken to minimize adverse impacts to fish and wildlife resources affected by  
3 oil and gas operations, as provided in [section 2];

4 ~~(b)~~(c) classify wells as oil or gas wells or class II injection wells for purposes material to the interpretation  
5 or enforcement of this chapter;

6 ~~(c)~~(d) adopt and enforce rules and orders to effectuate the purposes and the intent of this chapter.

7 (3) The board shall determine and prescribe ~~what~~ which producing wells ~~shall be~~ are defined as "stripper  
8 wells" and ~~what~~ which wells ~~shall be~~ are defined as "wildcat wells" and shall make ~~such~~ orders ~~as that~~ in its  
9 judgment are required to protect those wells and provide that stripper wells may be produced to capacity if it is  
10 considered necessary in the interest of conservation to do so.

11 (4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1,  
12 1953, this chapter does not authorize the board to limit or restrain the rate<sub>1</sub> {daily or otherwise}<sub>1</sub> of production of  
13 gas from that pool by any well ~~then or thereafter~~ drilled and producing from that pool to less than the rate at which  
14 the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

15 (5) The board has exclusive jurisdiction over all class II injection wells and all pits and ponds in relation  
16 to those injection wells. The board may:

17 (a) issue, suspend, revoke, modify, or deny permits to operate class II injection wells, consistent with  
18 rules made by it;

19 (b) examine plans and other information needed to determine whether a permit should be issued or  
20 require changes in plans as a condition to the issuance of a permit;

21 (c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids  
22 to be injected and the operation of the well;

23 (d) authorize its staff to enter upon any public or private property at reasonable times to:

24 (i) investigate conditions relating to violations of permit conditions;

25 (ii) have access to and copy records required under this chapter;

26 (iii) inspect monitoring equipment or methods; and

27 (iv) sample fluids ~~which~~ that the operator is required to sample; and

28 (e) adopt standards for the design, construction, testing, and operation of class II injection wells.

29 (6) The board shall determine, for the purposes of using the oil and gas production damage mitigation  
30 account established in 82-11-161:

1 (a) when the person responsible for an abandoned well, sump, or hole cannot be identified or located;  
2 or, if the person is identified or located, when the person does not have sufficient financial resources to properly  
3 plug the well, sump, or hole; or

4 (b) when a previously abandoned well, sump, or hole is the cause of potential environmental problems  
5 and no responsible party can be identified or located or, if a responsible party can be identified and located, the  
6 person does not have sufficient financial resources to correct the problems."

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8 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 and 2] are intended to be codified  
9 as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to  
10 [sections 1 and 2].

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